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THE RULE AS TO BACK-ACCOUNTING BY TRUSTEES.

In suits under S. 92 of the Civil Procedure Code, where a general account of the rents and profits of the trust estate is asked for, the question may frequently arise within what period of time the account should be directed backwards. S. 10 of the Limitation Act of 1908 provides that a suit of that kind against an express trustee in whom the property is vested is not barred by any length of time. It is open to doubt whether the section will apply to a suit against the shebait of a temple because property is not *vested* in him on trust [see *Vidya Varuthi* v. *Balusami* (1) and *Ganga Prosad* v. *Kuladananda* (2)], but it will apply to cases where properties are conveyed to trustees for religious or charitable objects such as a temple kattalai, dharmasala or chatram. Where in such cases the trustees are proved to have acted *bona fide* but mistakenly in the application of the trust funds the English rule as to back-accounting can be applied. The rule was recently applied by a Bench of the Madras High Court in the Kalpathi ease [*Kelu Achan* v. *Sivarama Patter* (3)].

In England, as in India, except in specific cases provided for by the Trustees Act of 1888, no fixed limit is laid down as to the period during which charity trustees would be ordered to account. The general rule there is that the account should be taken from the time when an inexcusable and unexplained misappropriation of the trust fund commenced. [*A. G.* v. *Newbury Corporation* (4). See also Tudor on Charities and Mortmain, 6th Ed., p. 238, and Law relating to Administration of Charities, 3rd Ed., by Bourchier-Chilcot, p. 124.] But

1. (1921) L R 48 I A 302 at 315 : I L R 44 M 831 : 41 M L J 346 (P C).
2. (1925) 30 C W N 415.
3. A S No. 390 of 1923.
4. (1838) C. P. Cooper 72 : 47 E R 406.

the Court of Chancery has always exercised a discretion with regard to the period for which an account should be directed. Thus where trustees are not guilty of wilful misapplication but have acted under a *bona fide* mistake the time at which the maladministration was brought to the notice of the trustees has in general been taken to be the starting point wherefrom the account should be directed. "It is however a great mistake to suppose that the Court has any discretion in determining the right of a charity. The discretion is only in considering how far that right is to be enforced." [*A. G.* v. *Pretyman* (5)].

The earliest traces of the rule as to back-accounting by charity trustees appear in certain judgments of Lord Hardwicke though it is doubtful if it was totally unknown even earlier. For instance, Lord Chancellor King held in *A. G.* v. *Rigby* (6), a case of maladministration of charity funds, that he "would not disturb anything that had been already done" during a period of sixty years prior to the filing of the information. But Lord Hardwicke for the first time assigned reasons for the rule. Thus in *A. G.* v. *Balliol College, Oxford* (7), the Lord Chancellor refused to suffer a retrospect as regards the general account because he said a college stood on a different footing from individual persons and because the *cestui que trust* had acquiesced in its conduct. The rule, however, was more accurately stated and applied by the same eminent Judge in *A. G.* v. *Talbot* (8). There the trustees diverted the trust funds, elected themselves objects of bounty and took the income. It was held that such election was void. As to the claim for a general account the Lord Chancellor said: "Suppose the masters and fellows should have erred in the construction of the statutes, they may have innocently erred, and in such a poor provision as this is, it would be a great absurdity to make a fellow account for commons, etc., which he may have eat upon an imagination he had a right to them." That the general rule is to account from the commencement of the misapplication and that Courts of Equity will not condone maladministration of charity funds apart from *bona fide* mistake is borne out by a judgment of Lord Hardwicke himself. In *A. G.* v. *Corporation of Bedford* (9), the master of a

5. (1841) 4 Beav. 462 : 49 E R 418.
6. (1732) P. Wms. 145 : 24 E R 1005.
7. (1744) 9 Mod. 407 : 88 E R 538.
8. (1734) 3 Atk. 662 : 26 E R 1181.
9. (1754) 2 Ves Sen 505 : 26 E R. 323.

school wrongly took the usher's salary and he was directed to account from the commencement of the misapplication. The Lord Chancellor said: "Though it is said this account will ruin the master, I cannot help that; but must do it for the sake of justice and precedent."

But this branch of the law was far from settled even during the beginning of the last century. Thus in *A. G.* v. *Dixie* (10), the Court ordered an account from the date of the bill in order to save trouble and expense. In *A. G.* v. *The Brewers' Co.* (11), Sir W. Grant pointed out that the law was still uncertain on this point. In directing an account from the time when the existence of the trust was declared by Act of Parliament the Master of the Rolls said: "No trustee can be held competent to say he will account only from the time at which a demand is made". Similar questions arose in certain cases which came up before Sir John Leach, V. C. In *A. G.* v. *Joliffe* (12), he recognised the rule that a trustee should not be directed to account for back-rents unless he had acted corruptly with regard to the trust funds. In *A. G.* v. *Corporation of Winchester* (13), he gave his reasons for the rule in the following terms: "There is nothing that can reasonably be called corruption in continuing without inquiry a practice which has continued for centuries; secondly, such an account would defeat some other purposes of the Corporation; thirdly, it is not necessary for re-establishing the charities". Where, however, there was no question of *bona fide* mistake on the construction of the deed of trust or otherwise the Vice-Chancellor was not slow in refusing to exercise the discretion in favour of trustees. Thus in *A. G.* v. *Mayor of Bristol* (14) a general account was directed as regards the entire rents.

With Lord Eldon however we come to a stage when the rule is stated and applied as one based upon some principle. His judgment in *A. G.* v. *Corporation of Exeter* (15) has now become a classic. In that case the information complained that the rents and profits of a charity estate had been misapplied towards certain objects of public utility not contemplated by the author of the trust. It was, however, conceded (16) that the mode

10. (1805) 13 Ves. 519 : 33 E R 388. 11. (1818) 1 Mer. 495 : 36 E R 755

12. (1822) I L J Ch. (O. S.) 43.

13. (1824) 3 L J Ch. (O. S.) 64.

14. (1818) 3 Mad. 319 : 56 E R 522.

15. (1826) 2 Russ 45 : 38 E R 252.

16. *See* the arguments of Sugden in *A. G.* v. *Exeter*, (1827) 3 Russ, 395 at p. 396 : 38 E R 624.

ad administering the charity had gone on unquestioned for centuries and that the trustees had not acted corruptly. In a famous passage the Lord Chancellor stated the law in these words: "With respect to the general principle on which courts deal with trustees of a charity, though it holds a strict hand over them, when there is wilful misapplication, it will not press severely upon them when it sees nothing but mistake. It often happens from the nature of the instrument creating the trust, that there is great difficulty in determining how the funds of a charity ought to be administered. If the administration of the funds, though mistaken, has been honest and unconnected with any corrupt purpose, the court, while it directs for the future, refuses to visit with punishment what has been done in time past. To act on any other principle would be to deter all prudent persons from becoming trustees of charities". To admirers of Lord Eldon the above case is also memorable because the Lord Chancellor resigned his office before delivering final judgment therein. Lord Chancellor Lyndhurst, however, affirmed his judgment and directed an account without prejudice to past application. [See *A. G.* v. *Exeter* (16).] One other judgment of Lord Eldon may also be noted. In *A. G.* v. *The Dean and Canons of Christ Church* (17) [see also the judgment of Sir T. Plumer, M. R., in *A. G.* v. *Christ Church* (18)] the testator directed the trustees to erect a free grammar school and pay the master and usher certain salaries. The trustees built a free school and paid the said persons increased salaries and this went on for nearly a century. On an information the Lord Chancellor held that the trustees had acted mistakenly and directed an account for a period of six years prior to the bill, but he allowed the college the increased salaries already paid on the ground that "the will admitted of a good deal of difficulty in the construction".

A few cases on the other side of the line may also be referred to. In *A. G.* v. *Exeter* (19), a Corporation which had been in possession of charity lands admitted by their answer to the information that they had retained the surplus rents and applied them to corporate purposes distinct from those of the charity, always charging their books of account with the sums so retained. It was held by Sir W. Grant, M. R., on a hearing by

16. (1827) 3 Russ. 395 38 E R 624.
17. (1826) 2 Russ. 321 : 38 E R 356.
18. (1822) Jac. 474 : 37 E R 928.
19. (1827) 2 Russ. 368 : 38 E R 372.

Sir T. Plumer, M.R., on a re-hearing [see *A. G.* v. *Exeter* (20)] and by Lord Chancellor Eldon on appeal that the Corporation must be decreed to account from the commencement of the charity, namely for a period of 200 years. The only order the Lord Chancellor thought fit to make considering the hardship of the case was to refer the matter to the Attorney-General whether it would be proper for the charities to accept a less sum in lieu of its dues. This practice was subsequently followed in several cases. See *A. G.* v. *Corporation of Carlisle* (21), *A G.* v. *Brettingham* (22) and *A. G.* v. *Pretyman* (5). Similarly in *A. G.* v. *Stafford* (23), Lord Gifford, M. R., decreed an account of the charity properties for a period of 35 years commencing from the date at which the accounts set forth in the answer began.

Quite a number of cases were decided by Sir J. Leach, M. R., giving effect to the rule as to back-accounting. In *A. G.* v. *Corporation of Berwick-upon-Tweed* (24), the question arose on the construction of the terms of a will whether the income of certain properties belonged to the Corporation or to the charity and it was ultimately decided that the charity was entitled to it but the account was decreed only for six years prior to the suit because it was found that it was only then the rents were claimed for the use of the charity. Similarly in *A. G.* v. *Stationer's Co.* (25) the court directed an account from the date of filing the information because there was nothing amounting to misconduct on the part of the trustees who had merely acted according to the practice of their predecessors. The Master of the Rolls summarised the rule in the following words in *A. G.* v. *Burgesses of East Retford* (26): "Where the corporators for the time being have no knowledge of the fact that the lands in question were devised for charitable purposes nor had any knowledge of circumstances which ought to have put them upon inquiry into the nature of their title to the lands in question but have *bona fide* followed the practice of their predecessors in the application of the rents and profits either to other charitable purposes not warranted by the will

5. (1841) 4 Beav. 462 : 49 E R 418.
20. (1822) Jac. 443 : 37 E R 918.
21. (1831) 4 Sim. 274 : 58 E R 103.
22. (1840) 3 Beav. 91 : 49 E R 35.
23. (1826) 1 Russ 547 : 38 E R 211.
24. (1829) Taml. 239 : 48 E R 95.
25. (1831) 9 L J Ch. (O. S.) 229.
26. (1833) 2 My. & K. 33 : 39 E R 857.

of the devisor or to the general purposes of the Corporation it appears to me that in such a case there being no wilful breach of trust or improper motive imputable to ancient corporators it would be unfit to compel the corporation to account for and satisfy out of their general corporate property the rents and profits so applied by them before they had notice that the propriety of such application was questioned.... To carry back the account from the commencement of the misapplication in such cases would prove the ruin of half the corporations in the United Kingdom."

In the two Newbury cases however Lord Brougham, L.C., pointed out the need for applying the doctrine within the strictest limits. Thus in *A. G.* v. *Newbury Corporation* (4) in directing an account against the trustees from the date of their appointment he observed thus: "It appears to me very difficult to know, without precedent, how the time of filing the bill should be the period during which the enquiry should be limited. The general period I take to be from the beginning of the breach of trust: but if the trustees can satisfy the Court that they laboured under an ignorance of law or of fact, or of both, they may be excusable in that respect. For example where there is a cramp and difficult deed to be construed. But what the Court is always looking after is, . . when did the misapplication of the funds with the knowledge of the party that he was not excusable commence?" A similar course was pursued in *A. G.* v. *Mayor of Newbury* (27). There the Lord Chancellor pointed out that though corporations should be more leniently dealt with than individual persons there should be no undue relaxation of the principle since that would open the door to boundless abuse. He also pointed out that the diversion of trust funds to other objects would constitute a breach of trust and that the mere fact that the trustees had actually spent away the money would not exculpate them in the eye of the law unless they had been misled.

There is nothing very illuminating in the judgments of Lord Langdale, M. R., on this aspect of the law. In *A. G.* v. *Corporation of Cambridge* (28) he pointed out that where the breach of trust had been innocently committed by persons pursuing the conduct of their predecessors a retrospective account should be avoided if they offered to give every facility to the

4. (1838) C P Cooper 72 : 47 E R 406.
27. (1834) 3 My. & K 647 : 40 E R 246.
28. (1836) 5 L J. Ch. 357.

due application of the trust money in future. A similar view was expressed in *A. G.* v. *Pretyman* (5). In *A. G.* v. *Caius College* (29) the trustees were not surcharged for overpayments made to charitable objects because it was found that they had acted under a *bona fide* mistake. *A. G.* v. *Draper's Co.* (30) was a case of *bona fide* error on the construction of the will persisted in from the commencement of the trust. *A. G.* v. *Cullam* (31), *A. G.* v. *Shearman* (32), *A. G.* v. *Christ's Hospital* (33), *A. G.* v. *Draper's Co.* (34) and *A. G.* v. *Leicester* (35) were the other cases decided by the Master of the Rolls. In the last case, however, an account was directed from the commencement of the breach of trust on the ground that the trustees had acted corruptly and not mistakenly.

In Scotland where the plea of *bona fide perceptio et consumptio* is fully established the rule as to back-accounting has been given effect to as a principle of general applicability. In *University of Aberdeen* v. *Irvine* (36) it was held upon the construction of ancient documents that the increased income of lands dedicated to charity belonged to the charity and not to the trustees but all the same an account was ordered only since the signetting of the summons. The principle was applied to a case other than a charitable trust in the case of *The Lord Advocate* v. *Drysdale* (37). Their Lord Chancellor Cairns stated that "perception and good faith and complete ignorance of an adverse title will be a sufficient defence to any claim for the recovery of the back-rents and profits". In *Andrews* v. *Mcguffog* (38) the *Exeter case* (15) was relied on and it was held that charity trustees should not be made liable to account for ignorant misapplication of funds towards objects not within the charity. It is not the fact of the funds having been expended but the fact that they were spent under a *bona fide* mistake that constitutes the ground for exonerating the trustees*.

*See observations of Lord Watson in *Andrews* v. *McGuffog* ibid, at p. 324.

5 (1841) 4 Beav. 462 : 49 E R 418. 15. (1826) 2 Russ. 45 : 38 E R 252.
29. (1837) 2 Keen 150 : 48 E R 585.
30. (1841) 4 Beav. 67 : 47 E R 263.
31. (1836) 1 Keen 104 : 48 E R 246.
32. (1839) 2 Beav. 104 : 48 E R 1119.
33. (1841) 4 Beav. 72 : 49 E R 265.
34. (1843) 6 Beav. 381 : 49 E R 873.
35. (1844) 7 Beav. 175 : 49 E R 1031.
36. (1868) L R 1 H L Sc. 289. 37. (1874) L R 2 H L Sc. 368.
38. (1886) 11 A C 313.

Quite a liberal application of the rule as to back-accounting was made in the case of the *A. G.* v. *The Master Wardens, etc., of the Wax Chandlers' Co.* (39). There a testator had in the sixteenth century conveyed certain properties to the respondent company on condition of their making certain annual payments towards named charitable objects. At the time of the testator's death the annual income was just sufficient to meet the payments and the cost of repairs. Subsequently the income increased considerably, but the company appropriated the surplus in the belief that the same belonged to them. Towards the end of the eighteenth century they also purchased a piece of land adjacent to the devised land and the two properties were thrown together and built upon. An information filed in 1867 for declaring that the entire income belonged to the charity and that the land newly purchased formed part of the charity property was dismissed by the Master of the Rolls and on appeal by Lord Chancellor Hatherley. When the matter came up before the House of Lords, it was held that the whole income was dedicated to the charity and that the surplus did not go to the company. As regards the property purchased it was held however that it belonged to the company because there was no evidence to show that the charity funds were in fact utilised for the purchase.. An argument of Sir G. Jessel that it should be assumed that the purchase was done with the charity funds was not accepted. As Lord Cairns pointed out: "there is no evidence whatever showing that the property of this charity, specifically, was applied in the purchase. It may well be that the Master and Wardens of the Wax Chandlers' Co., being under the impression that the surplus was theirs and having it along with their other funds, applied some part of it to that purchase; but there is no evidence earmarking, tracing or following the charity money into that purchase. Under those circumstances, to take possession of that new purchase for the purpose of the charity would, as it seems to be, be nothing short of following the back-rents ..... Of course in cases of this kind it has not been the practice of the court to follow back-rents." Similar observations were made by the other Law-Lords.

But Lord Chelmsford went further than the case required and made the following observations :- "If it could have been proved that any part of the original rents and profits had been *expressly applied* to the purchase of the land in question, to take

39. L R 6 H L 1.

it from them now would be virtually to make them account for rents and profits prior to the filing of the information.. a mode of dealing with charitable trustees who had acted *bona fide* but mistakenly as to the charity fund not adopted by the Court of Chancery". This statement of the law is not borne out by principle or precedent. For, if certain moneys of the trust are invested in land they continue in existence in another form and can be traced. If it was supposed that the moneys should be earmarked for purposes of tracing we need only say it is no longer the law in England since the decision in *Halletts's case* (40) and *Sinclair* v. *Brougham* (41).* The doctrine of back-accounting assumes that the moneys have been expended by the trustees either on themselves or on other objects. If it is conceded that they continue to exist in one form or another it is rather hard to believe that even then they should not be restored to the trust. Suppose for instance that in the information it was admitted or proved that a sum of money belonging to the trust was in the hands of the trustee. Could it be said even then that the trust will not be entitled to claim the same? Under those circumstances the amount was directed to be paid to the charity with interest in *A. G.* v. *Corporation of Cambridge* (42). And on similar facts Sir J. Leach, M. R., refused to order the trustees to pay the money into Court only because its existence was brought to his notice after he had passed a decree refusing a retrospective account. [See *A. G.* v. *Corporation of Winchester* (43)]. Thus the basis of the decision in *Wax Chandlers case* (39) must be taken to be that there was nothing to show that any funds of the charity were in fact utilised for the purchase of the property in question.

The result of the authorities in England seems to be as follows: The general rule is that trustees should account from the date of the misapplication of charity funds. Where however the trustees have expended the funds under a *bona fide* mistake either because of the ambiguity of the deed of trust or because of the conduct of their predecessors or because of laches or acquiescence on the part of the *cestui que trust* (44) the

*See also Article on "The limits of the doctrine of tracing" in 53 M. L. J. 133.

39. L R 6 H L 1. 40. (1880) L R 13 Ch. Div. 696.

41. L R (1914) A C 398.

42. (1836) 5 L J Ch. 357.

43. (1824) 3 L J Ch. (O. S.) 64.

44. *See* Judgment of Lord Campbell in *Bright* v. *Legerton*, (1861) 2 De. G. F & J 604 : 45 E R 755.

court of Chancery has ordered an account only from the date when the fact of misapplication was brought to the notice of the trustees. The date of filing the bill will be material only in this connection. It may also be noted that "the rule applies whether the funds have been applied in attaining objects contemplated by the trust by unauthorised means or whether they are employed for the attainment of objects not within the trusts at all, or whether they have been retained by the trustees for their own benefit, as in cases where there is a *bona fide* question whether the surplus income belongs to the donee beneficially or is applicable to charity"* The rule itself is an application of the doctrine of tracing. It proceeds on the footing that what has been misapplied has been lost or destroyed so as not to be capable of being followed.

In India the rule as to back-accounting was applied by Farran, J., in *A. G. of Bombay* v. *Bai Punjabai* (45). It was admitted in that case that the expenditure of the charitable income was not in exact conformity with the testator's wishes. At the same time it was found that charges of fraud and dishonesty levelled against the trustee were not proved and that the trustee had acted under a *bona fide* mistake. The following observations appear in the judgment: "The evidence does not afford any ground for supposing that *P* has trust property in her hand which it is sought to follow. The claim is now reduced to a simple claim against her as trustee for an account of income and disbursement and for the balance, if any, . . In the absence of proof of dishonesty and fraud no account can be directed against *P.* . . ." The court also found laches and acquiescence on the part of the *cestui que trust* Further it was pointed out that a decree for general account, considering the trouble and expense, was of doubtful utility to the trust. It is however significant to note that in the case of an item of property for which regular accounts were submitted the court ordered the account to be gone into.

The rule was recently applied by the Madras High Court in *Kelu Achan* v. *Sivarama Patter* (3). In a suit under S. 92, Civil Procedure Code, there was a dispute whether the trust was public or private and it was ultimately held that it was public. An account was asked for against the present trustee and it was found that the maladministration was entirely

*See Tudor on Charities and Mortmain, 6th Ed., p. 239.

3. A. S. No. 390 of 1923. 45. (1894) I L R 18 B. 551.

due to his predecessor in office. Their Lordships held that the trust could recover only such moneys as could be traced to the possession of the tarwad, the karnavan of which was the *ex-officio* trustee of the suit temple. It was stated that "it is a general principle also that back-accounting will not be decreed except on proof of dishonesty or malversation". The rule as stated in the above form may not be quite accurate. The correct rule is, that trustees are liable to account for back-rents except in a case where they are shown to have acted under a *bona fide* mistake. On the facts however the rule seems to have been correctly applied. The karnavan who was the *ex-officio* trustee was in no way subject to the control of the uralers and the deceased trustee dealt with the trust funds as his own private property and it was rightly held that the tarwad property should not be rendered liable for his maladministration unless money could be traced into its possession. Of course there could have been no objection to a decree against the trustee to the extent of the assets of the deceased trustee in his hands, but this apparently was not pressed. A general observation is made in the judgment that the present trustees were not liable for the misdeeds of their predecessors. A similar observation was made by Schwabe, C.J., in another Madras case.[See *Doraivelu Mudaliar* v.*Adikesavalu Naidu*(46).]If by this their Lordships meant that there was no question of personal liability it may be true. But if it was intended to lay down that the property which devolved on the trustee on the death of his predecessor was not liable it is obviously incorrect. [See *Vishnu Nambudripad* v. *Sankaran Nambudripad* (47).

In conclusion it may be pointed out that though the English rule as to back-accounting may be applied in India in proper cases as a rule of justice and equity, any undue extension of the rule is likely to lead to dangerous consequences under the peculiar conditions prevailing in this country. As observed by the learned author in his book on Hindu and Muhammadan Religious Endowments(1st Ed.)at p. 318., "In India there is no such public spirit as exists in England and a Hindu taught by nature, religion or other circumstance to be meek is accustomed to look on calmly while maladministration of public property is going on. The individual interest is not affected in such cases and he does not therefore concern himself with anything that does not affect his individual interest." It may also be borne in mind

46. (1922) M W N 620. 47. (1920) 13 L.W 369.

that in India trusteeship is generally vested in individual persons and very often it devolves among members of a family under the hereditary principle. It is needless to point out that chances of mismanagement are greater in such cases than in cases where the office is vested in corporations. Under these circumstances courts in this country will be acting rightly if they proceed with a certain degree of caution in applying the rule enunciated above.

B. V. VISWANATHA AIYAR,
Mylapore. *Vakil, High Court.*

SUMMARY OF ENGLISH CASES.

In re FORSEY AND HOLLEBONE'S CONTRACT, (1927) 2 Ch 379 (C. A.).

Vendor and Purchaser—Contract for sale of property free of encumbrances—Resolution of local authority approving town-planning scheme whether constitutes encumbrance—Contract entered into in ignorance of resolution—Avoidance—Permissibility.

A contract for the sale of certain house property free of encumbrances was entered into and a certain sum was paid as deposit by the purchaser. It appeared subsequently that the local authority had passed a resolution approving of a Town Planning Scheme and that, if put into effect, a portion of the premises in front would be acquired for purposes of extending the road. It also appeared that the parties were not aware of the resolution when they entered into the contract. On a summons being taken by the purchaser for a declaration that the vendor had not shown a good title in accordance with the contract and for refund of the deposit :

Held, by the Court of Appeal, affirming a judgment of Eve, J., that the resolution of the local authority did not give rise to an encumbrance on the property sold, that the vendor had not failed to show a good title and that the deposit need not be repaid by him to the purchaser.

THE FAGERNES, (1927) P 311 (C A).

Shipping—Collision—Territorial jurisdiction—Statement of Attorney-General—Conclusive nature.

Where the question arose whether the Bristol channel, the scene of a maritime collision, was within the territorial jurisdic-

tion of the Crown or not and the Attorney-General appeared on behalf of the Crown and made a statement after consultation with the Home Secretary that the place of collision was not within territorial waters :

Held, by the majority of the Court of Appeal, Bankes, L.J. dissenting, that the statement of the Attorney-General was conclusive and binding on the Court.

Decision of Hill, J., in (1926) P. 185 reversed.

DE LA GARDE *v.* WORSNOP & Co., 96 L. J. Ch. 446.

Arbitration—Agreement containing arbitration clause—Determination of agreement by something arising outside the contract and something arising out of the contract itself—Distinction between as regards effect on arbitration clause.

A clause as to arbitration which is contained in an agreement for sale of a business is determined when the agreement itself is determined by something arising outside the contract and consequently any dispute as to the cause of such determination cannot be made the subject of arbitration. But if the agreement is determined by something arising directly out of the contract itself, the arbitration clause is not determined and consequently any such dispute as to the cause of the determination can be the subject of determination.

BURTON (JAMES) & SON, *In re,* 96 L. J. Ch. 457.

Company—Allotment of shares before the filing of statement in lieu of prospectus—Validity—Transfer of shares before the filing of statement—Acceptance of certificate and bonus by the transferee subsequent to the filing of statement—Transferee estopped from denying he was a member.

Though an allotment of shares before the filing of a statement in lieu of prospectus is void, still, if the person who has obtained a transfer of the shares accepts a certificate for the shares as well as the bonus declared by the company, he is estopped from saying he is a member of the company.

BAINES *v.* NATIONAL PROVINCIAL BANK, 96 L J K B 801.

Banker and Customer—Cheque cashed shortly after closing hour of bank—Legality.

A bank is entitled within a reasonable business margin of their advertised time for closing, to deal with a cheque, not of course in the sense of dishonouring it, but in the sense of doing

that which the cheque asks them to do, namely to pay it. Where the plaintiff drew a cheque on the defendant bank in favour of a third person shortly before 3 o'clock in the afternoon and it appeared that there was insufficient time for the cheque to be presented at the bank for payment at or before 3 o'clock which was the usual hour for closing and as a matter of fact the bank cashed the cheque five minutes after 3 o'clock and debited the customer's account with that sum before he could countermand the cheque the next day:

Held, that the bank was entitled to cash the cheque as it did and debit the customer for the same.

MUSSMAN *v.* ENGELKE, 96 L J K B 824 (C A).

International Law—Ambassador—Privilege—Investigation by Foreign Office—Statement of Attorney-General—Conclusive nature.

Held, that the Attorney-General's statement as to the result of the Foreign Office investigation regarding the question whether a particular person is privileged on account of his being on the staff of the Foreign Embassy is not conclusive and that the court could direct the person pleading privilege to be cross-examined.

DAVIS (H. M. INSPECTOR OF TAXES) *v.* HARRISON, 96 L J K B 848.

Income-tax—Professional football player—Payment of benefit on transfer to another club—Liability to assessment—Income-tax Act, 1918, *Sch. E.*

A professional football player was promised a sum of money by a Football Club at the end of ten years' service. The rules of the club contemplated as a matter of business the power to grant benefits. In the ninth year of his service the player was transferred to another club and he received the sum promised to him the next year by the club to which he originally belonged. The benefit was a simple payment and not the result of public subscriptions.

Held, that the payment constituted income for purposes of assessment to income-tax and that it was by no means compensation paid for loss of employment.

Seymour v. *Reed*, (1927) A C 554 distinguished.

KASLER & COHEN *v.* SLAVOUSKI, 96 L J K B 850.

Sale of goods—Breach of warranty—Action by sub-vendee —Damages whether include costs incurred in defending action— Limitation.

Where a person has made known the purpose for which goods are intended and the purchaser has relied on that implied guarantee, the purchaser may recover not only damages but also costs incurred by a sub-vendee in defending an action. There is no ground for drawing a limitation to the application of the rule where there is a long chain of sub-vendees so long as the same article passes from hand to hand and the breach of warranty relates thereto.

FULLWOOD *v.* HURLEY, 96 L. J. K. B. 976.

Contract—Agent for sale—Vendor's commission—Contract with purchaser for commission—Right to double commission.

A hotel-broker, who was the authorised agent of the vendor for commission, made an offer to an intending purchaser that the purchaser might view the house and that "if business was done, he shall act for him at the usual brokerage". The purchaser looked at the property and ultimately made a contract with the owner under which he bought the house. The hotel-broker received his commission from the vendor. He then brought an action against the purchaser claiming further commission from him on the strength of the letter of offer made to the purchaser.

Held, that the fact that the purchaser accepted the offer to view the house and did not raise any objection to the clause in the letter that the broker shall act for him at the usual brokerage did not create a contract for the payment of such commission and entitle the plaintiff to claim further commission from him, as the plaintiff, as the vendor's agent, had already received commission from the vendor.

Per Lord Hanworth, M. R. :—It cannot be stated too plainly that an agent must not accept commissions from both sides, that, if there are two commissions that are to be received, it must be on the basis of the actual work being done for both parties with the assent of both parties after full knowledge. If such knowledge is afforded and it is made plain what position the agent occupies, then it is possible for the agent to act between the parties; but, if and so long as the agent is the

agent of one party, he cannot engage to become the agent of another principal without the leave of the first principal with whom he has originally established his agency.

ATTORNEY-GENERAL *v.* PAINE, (1928) 1 K B 9(C A).

Insurance (Unemployment)—Failure to pay contributions by the employer—Summary proceedings—Employer ordered to pay a fine to the employees and also to pay contributions in respect of each of the employees during the preceding year of employment—Civil action by the Crown for further unpaid contributions—Right to recover—Unemployment Insurance Act (1920), *S.* 22, *Sub-Ss.* 2, 3, 6.

The defendant employer has been summarily prosecuted under the Unemployment Insurance Act (1920), S. 22 for his alleged failure to pay contributions in respect of two persons employed by him. On the hearing of the summonses an order was made by the Justices requiring the defendant to a pay a fine in respect of each of these two persons, and also requiring him under Sub-section (3) of that section to pay contributions in respect of each of them during the preceding year of the employment. In an action by the Crown in the Civil Court for further unpaid contributions which could not be recovered in the summary proceedings before the Justices, Rowlatt, J., held that civil action for the balance of unpaid contributions is not sustainable. But the Court of Appeal reversed the judgment of Rowlatt, J., and held that an order made in summary proceedings against an employer does not prevent the recovery from the employer of other unpaid contributions in respect of the same employee by means of civil proceedings.

LEWIS *v.* GUEST, KEEN AND NETTLEFOLD, LTD., ETC., (1928) 1 K. B. 20 (C. A.).

Workmen's compensation—Accident in the course of the employment—Disabled to work to a certain extent—Employer giving light work in lieu of compensation—Cesser of the light work owing to general strike—Reviver of right to compensation—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37), *S.* 1—*Workmen's Compensation Act,* 1906, *S.* 1.

Owing to an accident arising out of and in the course of employment, certain workmen received injuries and were unable to continue the work. In lieu of compensation they were entitled to, they were given light work by the employer. Later

on, the employer was obliged to discontinue the services of these workmen owing to some serious situation in the labour market.

Held, the workmen were entitled to be paid compensation although they could not procure employment even if they were not injured.

LIGGETT (LIVERPOOL), LTD. *v.* BARCLAYS BANK, LTD., (1928) 1 K. B. 48.

Banker—Instructions that cheques should be met, provided they are signed by two Directors—Negligence—Cheques payable to trade creditors of the company—Liability of the banker.

The plaintiff company gave instructions to its banker the defendant to honour its cheques provided they were signed by two of its directors. But the defendant bank met some cheques which were signed only by one director, and those cheques were drawn only in favour of trade creditors of the plaintiff company. In an action for money had and received:

Held, on equitable principles, that as the liabilities of the company had not been added to by reason of such payments of the cheques the defendants were not liable and were entitled to stand in the shoes of the creditors whom they had paid.

LEIGH *v.* INLAND REVENUE COMMISSIONERS, (1928) 1 K. B. 73.

Revenue—Super-tax—Interest on bonds—Payment of arrears of interest in one year—Income of year in which payment made—"Receivable", meaning of—Income-tax Act, 1918, *S.* 5, *Sub-sec.* 3 (*c*).

The assessee in August, 1918, bought a number of bonds of a company incorporated under the law of Canada. The bonds bore interest, but at the time of his purchase the interest was unpaid since July 1, 1914. After the purchase, the arrears remained unpaid, and the succeeding instalments of interest remained unpaid until the middle of 1921, when a scheme was adopted and sanctioned by the Court in Canada in that year. In consideration of certain terms as to sinking fund and repayment, the company undertook to pay the arrears of interest and they at once paid the arrears up to 1919, as the scheme provided. The Revenue Authorities had assessed him to supertax for the next year on the basis that all that interest was income of 1921, and therefore assessable to super-tax for 1922-

23. The appellant (assessee) contended that those payments were "received" but not "receivable" in 1921, that they were "receivable" in 1914 and subsequent years and therefore the liability to super-tax belonged to those years and the sellers of the bonds were in the position of having the income 'receivable' down to 1918.

Held, (by Justice Rowlatt) that the interest on the bonds paid to the assessee in August, 1921, was part of his income for super-tax purposes for the year ending April 5, 1923. For income-tax purposes "receivability" without receipt is nothing and the meaning of S. 5 of Income-tax Act, 1918, must be "receivability" speaking of a debt which has been received, and means the date on which it is paid as distinct from the date on which it was accruing.

KASLER AND COHEN *v.* SLAVOUSKI, (1928) 1 K. B. 78.

Damages—Measure of—Sale of goods—Breach of warranty—Several successive sales—Whether costs incurred in actions between successive vendors can be claimed from the original vendor, by the 1st purchaser—Test—Reasonable defence.

The plaintiffs, who were wholesale furriers, bought some dyed rabbit skins from the defendants for the purpose, as the defendants knew, of their being made into fur collars for women's coats. Having made the skins into fur collars, the plaintiffs sold them to a firm *X* who re-sold them to *Y*, who in turn sold to *Z*, a draper. *Z* sold a coat with one of these fur collars attached to it to a lady. The lady on using the collar developed 'fur dermatitis' owing to antimony in the fur and so brought an action against *Z* for breach of warranty on the sale of the coat. Notice of the action was given by *Z* to *Y*, *Y* to *X*, and *X* to the plaintiffs and the plaintiffs to the defendants. A judgment was given against *Z* for damages and also costs. *Z* claimed this amount together with his own costs from *Y* who paid the same. *Y* recovered the amount he gave to *Z* and also his costs from *X*. *X* again recovered the amount he gave to *Y*, together with his costs from the plaintiffs, and, in an action by the plaintiffs against the defendants for breach of warranty on sale of the skins,

Held, that, as there was nothing unreasonable in resisting the original action, the plaintiffs are entitled to recover from the defendants the amount of the damages that the lady recovered in the first action and the amount of costs of that action on both sides, and also costs for each of the intervening parties.

INLAND REVENUE COMMISSIONERS *v.* PAKENHAM, ETC., (1928) 1 K. B. 118.

Super-tax—Assessment—Settlement in favour of an infant—Directions to trustees to apply a part of the income to the use of the infant—Direction for accumulation of the rest—Liability of the trustee for taxation in representative capacity—Income-tax Act, 1842, *S.* 41.

Where properties were settled upon trust with a direction that the trustees were to apply part of the income for the maintenance, education, etc., of the infant and accumulate the rest, and the trustee acted accordingly,

Held, that the trustee was not liable to be taxed in a representative capacity in respect of the entire income from the properties including that which was accumulated and that the proper assessment ought to be upon the amount actually paid over for the use of the infant.

TODD *v.* EGYPTIAN DELTA LAND AND INVESTMENT CO., LTD., (1928) 1 K. B. 152.

Income-tax—Limited Company incorporated and registered under the Companies Act of the United Kingdom—Establishment which the law requires in United Kingdom—Control and management in a foreign country—Directors residing abroad—Residence—Liability of Company to tax—Income-tax Act, 1918 (8 & 9 *Geo.* 5, c. 40), *Sch. D, Case V.*

Where a company, incorporated and registered under the Companies Act of the United Kingdom, has its establishment required by law in United Kingdom but its business is carried on wholly in a foreign country by the directors residing abroad,

Held, that the company can have more than one residence and that for the purpose of income-tax it is resident in the United Kingdom.

Swedish Central Ry. Co. v. *Thompson,* (1924) 2 K. B. 255; (1925) A. C. 495 applied.

GOWAR *v.* HALES, (1928) 1 K. B. 191.

Third party procedure—Motor insurance—Action for damages against motorist—Adding insurance company as party—Rules of the Supreme Court, O. 16, *Rr.* 48 & 52.

In an action for damages sustained through the negligence of a motorist in driving a motor cycle, generally speaking, an Insurance Company in which the motor cycle has been insured ought not to be added as a party.

NANCE *v.* NAYLOR, (1928) 1 K. B. 263 (C. A.)

Landlord and Tenant—Lease—Action for non-payment of rent—Decree for possession, rent and mesne profits in favour of the lessor—Subsequent agreement—Tenant undertaking to give up possession on a particular date—Relief against forfeiture—Competency of the Court to grant—Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 *Geo.* 5, c. 49), S. 46.

In an action for ejection for non-payment of rent, judgment was given in favour of the landlord for recovery of possession, rent and mesne profits. The landlord did not act upon that judgment with undue haste, and the tenant was given time to pay rent, mesne profits and costs. It was also notified to the tenant that, if rent and mesne profits and costs were paid, the order for possession would not be executed. The tenant failed to comply with this condition whereupon the landlord decided to execute the writ of possession. But an agreement was entered into between them by which the tenant undertook to pay out the amount of debts and costs under the fi. fa. and to give vacant possession of the premises by a certain date, in consideration of the landlord withholding the execution of the writ of possession. Subsequently the tenant applied under S. 46 of the Supreme Court of Judicature Act, 1925, for relief from forfeiture and Clauson, J., granted the relief.

Held (on appeal by the landlord) that the agreement signed by the tenant did not preclude the court from granting relief against forfeiture.

CORRESPONDENCE.

A LEGAL AID SOCIETY FOR MADRAS.

To

THE EDITOR,

MADRAS LAW JOURNAL.

SIR,

I crave the favour of a corner for the following few lines in your Journal:—

There has been, since 1925, in existence in Bombay a Society called the Bombay Legal Aid Society. The object of the Society is to undertake, promote and develop legal aid work, to encourage the formation of new legal aid organisations and to co-operate with the judiciary, the bar, and all organisations interested in the administration of justice so as to make justice

accessible to the poor and to reduce the costs of litigation. Any person desirous of engaging in any form of legal aid work is eligible for membership. Mr. N. M. Joshi, M.L.A., of the Servants of India Society is the President and Mr. H. A. H. Payne, who is the President of the Bombay Incorporated Law Society, is Vice-President of the Society. The Society counts among its members Vakils, Solicitors, and Advocates besides laymen in sympathy with the movement.

The Society gives free legal advice and assigns from among its members Vakil, Attorney or Advocate to conduct litigation free of charge in those cases in which it is satisfied that the applicant is too poor to pay for such assistance and that he has a case worthy of support. The applicant has to pay only the Court costs and out-of-pocket expenses. If the applicant is too poor to pay even the Court costs, the Society advises and assists him in seeking relief in *forma pauperis*. The Reports of the Society show numerous instances in which but for the legal aid given by the Society, the litigant would have been prevented from obtaining justice. The authorities in the local High Court, Small Causes Court and the Magistrates Courts appreciate the services which the Society by its members is able to render in securing justice for the poor and have permitted boards containing information about the Society to be put up in their respective Courts, and whenever deserving cases come to the notice of the presiding officers, they are made over to the Society. Sir Norman Macleod, the late Chief Justice of the Bombay High Court, who had an opportunity to watch the work of the Society, has contributed an appreciative article on the Society and its work in the current number of the Bombay Law Journal.

I beg respectfully to urge upon your readers the necessity of starting legal aid work on an organised scale in your city. It is always an advantage to have a constituted and recognised Society to which a poor man can have recourse and which, if he can establish his claim to relief, will advise him and, if necessary, procure the proper representation of his case before a Judge or a Magistrate. In a large city like yours there must be a wide scope for such a Society without in any way trenching upon the work done by lawyers in the ordinary course of their business for remuneration.

The formation of a Legal Aid Society in this great city concerns the whole profession and I trust that there may be found members willing to interest themselves in the move-

ment and take early steps to form a Society there. I shall be glad to furnish any further information about the Bombay Society, its constitution, procedure and work, to any of your readers on his writing to me for the same.

Yours truly,

NAYAN H. PANDIA, M.A., LL.B.,
Solicitor, High Court, Bombay,
Honorary Secretary,
THE BOMBAY LEGAL AID SOCIETY.

8th February, 1928,
FORT, BOMBAY.

JOTTINGS AND CUTTINGS.

Maiden Names for Wives.—German women may, says a British United Press message from Berlin, retain their maiden names after marriage, according to the decision of the Berlin Bar Association. But the Berlin lawyers declare that, according to the law, the maiden name must be attached to the husband's name by a hyphen. This is regarded as a concession to "hyphenated feminism." The question arose after a woman lawyer, Dr. Hasslacher-Friedenthal, had been summoned to court and ordered to abandon the use of her maiden name in conjunction with her husband's name. The Bar Association declared, however, that married women may legally employ their maiden name in private life only, and that it is an infringement of the law to use the former name in dealing with Federal, State, or Municipal authorities.—*L. J.*, 1927, p. 466.

Death of Judge after Part-Hearing.—A point of considerable interest was discussed in the Court of Appeal last week, namely, the position arising when the Judge hearing the case dies before its conclusion. The case in question had been part-heard by Fraser, J., when he fell ill and died; and the parties agreed that instead of having the case heard *ab initio,* they would ask Acton, J., to continue the hearing after reading the shorthand notes of the earlier proceedings. The normal course would have been a re-hearing of the whole case; and in

some instances the impression made on the mind of the Judge by the demeanour of the witness would have been an important factor which would not appear in a verbatim report of the proceedings. The parties had, however, agreed as to the course to be adopted; but in the Court of Appeal a doubt was expressed by the Judges as to whether the consent of the parties would avail to regularise proceedings which would otherwise be invalid. Although no precedent could be cited of a similar case, it would be indeed extraordinary if the parties, who could validly come to a settlement at any stage of the proceedings, could not properly agree as to the facts or the evidence upon which the case should proceed from the time of the untoward circumstance of the Judge's death.—*L. J.*, 1927, p. 471.

A Feminine Judge.—A woman has been appointed a Judge in Sweden. Miss Marguerite Trangott, after a university career and practice in the High Courts, now presides at one of the Stockholm Courts.—*L. J.*, 1927, p. 483.

How Judges are chosen.—Were judicial vacancies to be filled by open competitive examination—open, that is to say, to all eligible members of the Bar—it is possible, and perhaps probable, that the names of the successful candidates would not always be identical with those in fact chosen in the prevailing, and in many respects wiser, way. History records that all sorts of considerations weigh with the selectors. The age of the candidate; the nature of his practice at the Bar; if he is an M. P., the security or insecurity of his seat; whether he is in the right line of succession; his merits and his health; and although in a far less degree now than aforetime, his political history.

To be an A.-G.'s Devil is, of course, to be in the right line. Sir Edward Clarke has told of that bright and happy summer morning of June 14, 1879, when, on arriving at his chambers, he found a letter from Holker, A.-G., offering him the post of Devil. He refused; and Holker asked him for the names of the next best. He gave them, and he gave them good; J. C. Mathew and A. L. Smith. But J. C. was not a man of strong physique and was certain of an early judgeship. A. L. was strong, robust, and judicially uncertain.

"Then," said the A. G., "I will give it to him"; and he did.—*L. J.*, 1927, p. 483.

Sir Edward's Pass Over.—The passing-over of Sir Edward Clarke himself for a Law officership in 1885 was one of the most curious examples of the selective method. Merit and the expectation of the profession pointed to Macnaghten as the new A.-G. and to Sir Edward as S.-G. Macnaghten was senior to Webster and to Clarke; he had, says Sir Edward, a large practice and a safe seat. His qualities were such that he, a Conservative, had been offered a judgeship by a Liberal Government. Giffard, in fact, offered Macnaghten the Home Secretaryship and the reversion of the Chancellorship; but Macnaghten, seeing as in a glass darkly the hale longevity of the future Lord Halsbury, and rightly esteeming the immediate and proximate rewards better than all the uncertain glories of the Giffard reversion, declined the flattering offer.

To Clarke there came no emissary and no offer, and he pulled never a string. What the world expected did not take place. Deeply affected, no doubt, by the reported insecurity of Sir Edward's seat at Plymouth, the selectors appointed Webster A.-G. and Gorst Solicitor; a passing-over which profoundly affected Sir Edward's subsequent career, and afforded, incidentally, a glaring example of the occasional demerits of the selective method.—*L. J.*, 1927, p. 484.

Weak Bench and Strong Bar.—It has recently been written that the High Court Bench is likely to get worse and worse and the Bar to grow better and better; insomuch that the Bench will, in time, be dominated by the overpowering personalities which remain at or within the Bar. The observations were made in connection with the talk about the judicial vacancies and the manner in which they are filled. Men with big practices at the Bar do not want judgeships; what is five thousand as compared with twenty, thirty or forty thousand? Law officers, it was said, would not take an ordinary judgeship; they leave such small matters to the "Devil," and if they cannot get what they want, they continue at the Bar when the Government they serve and adorn goes out after an election.

Yet it does not work out quite in this way. The great Judge is not always, or often, a man who at the Bar commanded

the biggest practice. The conditions referred to have existed for many years; yet the Bench shows nowhere any symptom of being dominated by the big personalities. And in cases where the highly-feed silks have earned big fortunes there is in the Bench an attractiveness and a dignity, a security, and a traditional longevity, which appeals, in time, to most.—*L. J.*, 1927, p. 499.

A.-G.s and Judgeships.—To assume that an Attorney-General has a right to any judicial vacancy, if he desired it, is wrong. According to the best opinions, the Attorney-General has now no right to claim any particular judicial office. From the days of Lord Coke onwards the Chiefship of the Common Pleas was the "pillow of the Attorney-General". But apart from the Common Pleas he was entitled to nothing, and with that Chiefship his pillow disappeared. The Attorney could not demand the Chief Baronship of the Exchequer, nor the Chief Justiceship of the King's Bench, nor the Mastership of the Rolls. Sir W. Garrow, Attorney-General, tried hard, on the death of Thompson, C. B., to secure the Chief Baron's throne, but Lord Eldon was adamant. No Attorney-General, he was able to demonstrate, had been appointed Chief Baron for centuries.—*L. J.*, 1927, p. 500.

Lawyers Avoid Litigation.—Lord Carson had a "running down" experience in which his legal wisdom appeared at a somewhat later stage than in Lord Westbury's case. Presiding at a recent lecture by Mr. D. N. Pritt, K. C., on "The Law of Principal and Agent," he observed that he never realised how difficult that law was until his chauffeur—naturally, a most careful driver—knocked a man down in Regent Street.

He had statements that day from all who were concerned in the accident, and every statement was curiously diverse from all the others on material points. There was, in fact, no agreement even as to the place where the accident occurred, or as to the direction in which any of the witnesses were going at the time. In the circumstances Lord Carson took the only wise and proper course. He made up his mind to pay the man and get rid of the case and have no costs on either side.

There is another unreported case of a legal personage whose car collided with another near a country inn during closing hours on a Sunday afternoon. The inn was locked up and deserted, and a victim of the accident appeared to be on the

point of death. The legal personage did not hesitate: he broke into the inn, removed and carried away some brandy and saved the patient's life. The indignant landlord was subsequently squared, and the felony, if any, compounded.—*L.J.*, 1927, p. 500.

The Future of our Jurisprudence.—"Fictions," observed Mr. Augustine Birrell, Q. C., on December 13, 1900, "have played their part. Judge-made Law has played its part. To Statute Law belongs the future. Let us pray for well-drawn Statutes."

Twenty-seven years have passed; and at the opening of the twenty-eighth, looking calmly and dispassionately at the Books of Statutes, and endeavoruing, so far as in us lies; to remember the Statutory Regulations and the Private Acts, we can only repeat with humility, Let us pray without ceasing: for the need is great. The evidence of the years have proved that Augustine Birrell was not entirely wrong in his reckoning.

Fictions and Judge-made law have played their part ever since. Their usefulness continues to be spent; but they still lag superfluous on the legal stage. Lawyers understood legal fictions; there are probably a few who are not entirely confused by some recent examples of "Judge-made" law; but there is no man living who can declare with certainty the whole meaning of a modern Statute. Those who study Hansard, and observe the man-handling which a Bill receives before it finally emerges, maimed and bleeding, as a Statute, can only marvel that its words are still in some degree coherent and intelligible. Yet to such, said Augustine Birrell, belongs the Future. Let us, indeed, Pray.—L. J., 1928, p. 18.

The President as Journalist.—Lord Merrivale, like Sir Edward Clarke, began his effective career as a journalist; and in 1882, while the famous Q. C. M. P. was engaged on a political tour in the North of England accompanied by his newly-wedded bride, he had "a special piece of good fortune in the admirable reporting of his speeches by a young reporter who was sent by the *Western Morning News*" to accompany Clarke's progress from town to town. The young reporter was Henry E. Duke. "It has been my privilege," observes Sir Edward, "to be of some use to him in the career which, resembling my own in its course through the Reporters' Gallery to the Bar and Parliament led him to the high post of honour and of

danger, the Chief Secretaryship for Ireland"—and later, to the Presidency of the Probate Division and a peerage.

A sound lawyer, Sir Edward describes him, an impressive speaker, calm in judgment, firm in decision, of untiring industry and of unswerving rectitude. The quartette of "younger men," any one of whom Clarke regarded as fully capable of taking his place at the Bar—Rufus Isaacs, John Simon, F. E. Smith and H. E. Duke—all were politicians and, verily, all have "got on". Lord Reading, Lord Birkenhead, Lord Merrivale; and Sir John off to India for glory and back to a peerage, if he wants it.—L. J., 1928, p. 42.

Sir John Simon's Retirement.—It is but a few weeks since Sir John Simon, on his acceptance of the Chairmanship of the Indian Statutory Commission, intimated that this involved only a temporary interruption of his work at the Bar. and that he would resume his practice after Easter. Second thoughts, however, have expanded this temporary withdrawal from work into a definite retirement, and Sir John will not return to practice at the Bar. That the Courts will know him no more would be a rash prophecy. At the age of forty-two he refused the Chancellorship, and incidentally made way for Lord Buckmaster's brief occupation of the Woolsack. That was a choice of a political career which the subsequent course of events did not, perhaps, justify, but there were consolations, and Sir John Simon's return to the Bar gave him an easy predominance in advocacy, and an income, no doubt, commensurate with that predominance. Lord Birkenhead, who ought to know something about these matters, has said that had Lord Buckmaster refused the Woolsack, it is as certain as anything can be that he would to-day be earning an income of 30,000*l*. to 40,000*l*. a year. Sir John Simon did refuse, and the estimate for him could hardly be less. But, as in 1915, so again now, other ideals than the continuance of unrivalled success at the Bar have prevailed, and Sir John Simon will embark on his new career with the good wishes of the whole profession. Immediately it gives him the opportunity of great service in reconciling the benefits of British Government with the aspirations of the Indian peoples. Beyond that it is needless to look, but politics is an uncertain game, and the cold shade of opposition may very well give place in the future to more active responsibility, and to conspicuous achievement.—*L. J.*, 1928, p. 45.

Ex-Irish Judges and the English Bar.—The ruling of the Bar Council, which extends to pensioned ex-Judges of Ireland the right to practise in England under the usual conditions, if they have been called to the English Bar, will probably not lead to any serious invasion from the sister island. Judges who have retired are not usually in the mood for forensic struggles and conflicts. The question arises, now that this concession is made, whether retired English Judges might, without objection, enjoy a similar privilege. The concession would probably be accepted by the Bar only on the assumption that very few would make use of it. It would cause much perturbation if, in addition to the usual competition which comes from below through the Bar Examination, it became the fashion for Judges to retire from the Bench only to resume at the Bar, and so place the rank and file of practitioners between the upper and the nether mill-stones. In former times, of course, when a Judge's tenure of office depended on the continuance of Royal favour, a return to the Bar was not unusual; but between those times and our own there is no comparison.—*L. J.*, 1928, p. 47.

Dock Briefs and Wigs.—Another matter of considerable importance to members of the Criminal Bar was settled by the Bar Council in holding that it is permissible for counsel to leave the Court on hearing a prisoner ask for a dock brief; but that it is improper on such an occasion for a barrister to remove his wig. This finding has met with general approval, as laying down a fixed rule where the former diversity of practice and opinion had led to much discontent. The wig is now so much an established and inseparable accident of forensic costume that its removal in Court, and especially for the purpose of avoiding a dock brief, has been said to savour of indecency. Yet the wig is not as old as the Constitution. The "serious dress" which was considered proper to the Bar in the days of the Commonwealth did not include a wig; that was introduced in the time of Charles II, and counsel have continued to this day the "bands of the Commonwealth with the head-dress of the Restoration". The black robe dates from the death of Queen Mary, and not, as commonly supposed, from that of Queen Anne.—*L. J.*, 1128, p. 47.

K. C.'s £53,000 Fee.—What is believed to be the biggest fee ever paid to a barrister is, says *Reynolds News*, to be given to Sir Leslie Scott, K. C., M. P., for work which he has undertaken in India. He is to receive a fee of 53,000*l.*, with a "refresher" of 200*l.* a day during the three months that he will be away making his total earnings for that short period more than 70,000*l.* Sir Leslie Scott, who was Solicitor-General in 1922, and is among the best-known K.C.'s at the Bar, sailed from London on December 29 to advise the Indian States and Princes as to their legal and constitutional positions with regard to the Statutory Commission now on its way to India.—*L. J.*, 1928, p. 79.

Laughter in (Privy) Council.—The Judicial Committee of the Privy Council is a Board pre-eminent in prestige and impressiveness; and the atmosphere of the little back room in which it performs its high functions is not such as to encourage the spirit of levity. Yet even King's Bench Court IV was never, even in the happy days of Darling, J., more merry than their Lordships in considering an appeal from British Honduras touching the testamentary gifts of Isaiah Emmanuel Morter to the "Parent Body of the Universal Negro Improvement Association for the African Redemption Fund"; an association which, it was alleged, could not lawfully be the recipient of the gifts aforesaid, by reason of its alleged revolutionary and warlike aims. In proof whereof the Universal Ethiopian Anthem was cited, which spoke of foes and victories, swords and armies and banners.

It was not to be supposed that such a topic would fail to remind Lords Carson, Shaw and Haldane of the revivalist hymns of their happy youth, or of the Salvation Army. Analogies leaped happily to their minds and tongues accordingly; and for a few brief moments the Judicial Committee of the Privy Council may be said to have relaxed.—*L. J.*, 1928, p. 81.

Peculiarities of the Judicial Committee.—There are two peculiarities about the Judicial Committee of the of the Privy Council. In the first place, its decisions are not binding upon other Courts; secondly, a dissenting judgment is an impossibility. In the House of Lords expressed differences of opinion are not uncommon; but in the Privy Council a mem-

ber of the "Board" who does not agree with the majority must forever hold his peace. It never delivers a judgment. The so-called judgment is no more than a statement of the reasons by which the Committee will be governed in tendering advice to His Majesty.

The rule that a joint opinion shall be given without disclosing "how the voices and opinions went" is now 301 years old. It is contained in Article 4 of an Order in Council made on February 20, 1627. But it has been broken on occasion. In a reported case Dr. Lushington intimated that a particular judgment was not unanimous, and after the decision in *Ridsdale* v. *Clifton,* where an appeal by a clergyman who had offended in matters of ritual was dismissed, Sir Fitzroy Kelly, C.B., allowed it to be known that he was not of the same mind as his colleagues.—*L. J.*, 1928, p. 81.

BOOK REVIEWS.

THE ADVOCACY SERIES, VOL. I—ILLUSTRATIONS IN CROSS-EXAMINATION, by Messrs. P. Ramanatha Aiyar and N. S. Ranganatha Aiyar. Price Rs. 4.

It is with pleasure we welcome the first volume of the Advocacy Series entitled "Illustrations in Cross-Examination" written jointly by Messrs. P. Ramanatha Aiyar and N. S. Ranganatha Aiyar, with a foreword from the pen of the Advocate-General of Madras. Looking at the outstanding figures as appellate lawyers and also the comparatively few instances of note among lawyers conducting original suits, we cannot but be sorry to trace the cause to the want of proper training and healthy leadership. It is perhaps this which has prompted the authors of this book to collect illustrations of the best English and American advocacy and present them to the members of the legal profession. Originality and intuition, better cultivated by the lawyer who conducts trials, may get chastened by his going through the pages of this book which contains some of the rare achievements in the field of cross-examination. Records have been left to us of the advocacy of men like Scarlett and Sir Charles Russell, no mean personalities, and it is an inordinate joy to be impressed with their splendid performances. The variety of methods of cross-examination, of which this volume is full, brings home the fact how great is the art and how much genuine study on our part a subject as this deserves. The arrangement

of the subjects is really fine and is made quite interesting by the choice gleanings from famous trials. Indeed, the select passages from the writings of men like Cox, Harris, Elliott and Wills regarding the principles that an advocate should place before himself in order to achieve his end are so ably brought in as to leave scarcely room for us to doubt the statement that "How difficult the art of cross-examination is, only those who have tried can appreciate". The book, as it is, supplies even to the most careless reader matter for interest. As we skip from one subject to another, the specimens of some of the past-masters in that art really enliven us and we are all the better in spirits after closing the book.

Though we are handicapped by the dearth of records of Indian advocacy, we feel that the few scrappy informations we have, may well be given a place by the authors of this book in the volumes yet to see the light of day. We are sanguine of the enthusiastic reception this book will get from the legal world.—K. C.

THE TRIAL OF ADELAIDE BARTLETT. Edited by Sir John Hall, *Bart.* Notable British Trials Series. Published by Messrs. Butterworth & Co., Ltd. Price Rs. 6-8-0.

"The Trial of Adelaide Bartlett," edited by Sir John Hall, narrates in the introduction the facts of the case, which are quite alluring, since "there is a peculiar fascination about a case of poisoning". The rest of the book sets out fully the trial, which yields to none of the previous volumes of the British Notable Trials Series, in its valuable instructions to the lawyer, seeking guidance in the great arts of cross-examination and forensic eloquence. Indeed, we do not seek Mr. Edward Clarke in vain for a quick perception of the smallest details when cross-examining witnesses, or for the brilliant effects of rhetoric when addressing the jury. His bold plunge into the medical jurisprudence and his emerging out with theories to create opinion in favour of the great improbability regarding the application of liquid chloroform by the prisoner to her husband strikes us not only as remarkable but as an instance of the all-comprehensiveness of the lawyer's intellect. We believe, that receptive minds, which are eager to achieve fame as criminal lawyers, will derive much benefit from such books. Hence our pleasure, at the addition of one more book to the widely known Trials Series.—K. C.

"SOAP BUBBLES," by S. V. V. Printed by Huxley Press, Madras. Price Re. 1.

This tiny volume contains a few humourous sketches by Mr. S. V. V., who may be quite familiar to the readers of "The Hindu". We begin with 'An Elephant's creed in Court' and pass on to 'An experience and prescription' of a railway passenger. We are amused at the discomforts of one 'In search of a son-in-law' and feel happy in the recollection 'when I was twenty'. We linger 'in the Mofussil Law Court' only to skip on to a discourse on the 'Vanity in a Railway Train'. We enjoy 'The wandering gipsy' with his sweet prophesies and strange requests, 'The country cousin abroad' becoming alive to the feverishness of city life, and the 'worry over the slippers' so common in every-day life, though we finally end with misgivings of the modern vogue of female education in 'My wife' and 'My daughter Visalam'. The subjects are treated nicely, though we hesitate to own that they have been wrought too skilfully to betray any conscious attempt at humour. But the book, as it is, may not fall short of the expectations. These 'Bubbles' by their translucency, may please the fancy of many a mind, eager to be diverted by moments of thoughtless pleasure.—K. C.